IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 1295 of 2006

Reserved on: 11.12.2007

Date of decision: 13.12.2007.

Vishav Dev … Petitioner

Versus

State of H.P. and Anr. … Respondents

Coram :

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the Petitioner: Mr. K.B. Khajuria, Advocate.

For the respondents: Mr. R.M. Bisht, Deputy Advocate General.

Per V.K. Ahuja, J.:

This writ petition is directed against the award of the Industrial Tribunal-cum-Labour Court, Dharamshala, passed in Reference No. 498/2004, decided on 17.1.2006. One of the main grounds for rejecting the petition taken by the Industrial Tribunal-cum-Labour Court are that the re-engagement of the claimant has been made as per the orders passed by the H.P. Administrative Tribunal and the Hon'ble High Court is seized of the lis, hence it alone can test the legality of the orders passed by the H.P. Administrative Tribunal directing his re-engagement. The Labour Tribunal further held that when the subject matter of the controversy is pending in a lis before the High Court, therefore, this Tribunal should not venture out this question

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

which would result in interfering with the subject matter of controversy already subjudice before the High Court. It was held that the Reference was bad and not maintainable.

The findings of the Tribunal were assailed by the petitioner by filing this writ petition alleging that the orders passed by the State Administrative Tribunal were held to be without jurisdiction by this Court in the writ petition and the petitioner was held entitled to seek the remedy before the appropriate Forum. The petitioner raised a demand and the matter was referred to the H.P. Industrial Tribunal who did not pass any order on merits but dismissed the reference as mentioned above.

A perusal of the order passed by the Industrial Tribunal shows that it made a reference to the directions of this Court in CWP No. 589 of 2001 and observed that the lis was still pending before this Court and, therefore, no orders can be passed in the Reference. It is clear that the learned Tribunal has not made a Reference to the final order passed in the writ petition mentioned above by this Court on 20.12.2001. It was observed in that case by this Court that the State Administrative Tribunal has no power, authority or jurisdiction to entertain, deal with and decide matters pertaining to Industrial Disputes Act, 1947, the writ petition deserves to be allowed and is accordingly allowed. The orders passed accordingly by the State Administrative Tribunal were quashed and set aside since the provisions of Industrial Disputes Act have been invoked by the Tribunal. It was observed that it is open to the respondent i.e. the petitioner to take appropriate proceedings in accordance with law. In case the learned Industrial Tribunal had insisted upon the parties to file the orders passed by this Court in the writ petition, it would t have been clear that the

lis was not pending before this Court but the order of the State Administrative Tribunal had been set aside since it had no jurisdiction to deal with the matter and as such, the writ petition had already been disposed of but was not pending as observed by the learned Tribunal. The petitioner was also given the opportunity to take appropriate proceedings in accordance with law and accordingly, he had raised an industrial dispute and the Reference had been made to the Industrial Tribunal-cum-Labour Court which was required to decide it on merits but the learned Industrial Tribunal did not decide the question on merits but dismissed the same observing that the matter was still pending before this High Court which observation was incorrect.

In view of the above discussion, we set aside the order of the Presiding Judge, Industrial Tribunal-cum-Labour Court, Dharamshala, passed in Reference No. 498/2004, decided on 17.1.2006 and remand the matter to him to decide the same in accordance with law. The parties through their counsel are directed to appear before the Industrial Tribunal-cum-Labour Court on **1st January, 2008**. The writ petition stands disposed of accordingly.

CMP No. 2911 of 2007:

In view of the final disposal of the main petition, this application also stands disposed of.

(Deepak Gupta),
Judge.

(V.K. Ahuja),
Judge

December 13, 2007
(BSS)